

CONSUMERS VERSUS CORPORATE SECTOR: JUDICATURE'S ROLE IN BALANCING THE EQUATION

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Abstract

This paper maps out the vulnerabilities of consumers in Pakistan in the backdrop of fast emerging market economy, coupled with administrative omissions and commissions resulting in favors for the corporate actors at the cost of consumers. Considering consumers a weak party vis-à-vis the market, given the financial, political and technical resources available with the market as opposed to consumers who are not even organized, the paper presents the challenges before the judiciary while adhering to the notion of equitable justice. Through investigating into four case studies, the paper draws some inferences to catalogue the challenges that the judicial system ought to address for dispensation of timely, cost effective, fair and equitable justice.

1. Introduction

The concept of consumer protection involves three major actors, namely (a) citizens as consumers of goods and services; (b) the market as producer and supplier of consumer goods and services; and (c) the government as receiver of revenue and as arbitrator in case of conflict between consumers and the market, in addition to providing services. This multiple role of the government is more complex because, in addition to its interest in generating tax from transactions involving consumers and/or the market, it is also responsible for formulation and implementation of policies, laws, and rules and regulations, in the name of the state, which affect all the concerned actors. Further, it becomes more complex, as the government has a corporate face because it continues to hold a significant share in the services and manufacturing sector. The interest of the market simply lies in maximization of profit, as opposed to the consumers who are

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¹ In this paper, 'governance machinery' refers to the Executive and Legislative organs of the State, unless specified otherwise.

concerned with sustainable access to quality goods and services, available at reasonable prices.

Over the last one and a half decade, the market has emerged as a very powerful actor due to progressive movement towards free market economy, privatization, and corporatization in Pakistan. It has demonstrated the capacity to influence policies, procedures and contractual arrangements in its favor, as it is better equipped with financial resources, knowledge, technology, and means to lobby the governance machinery¹. While the market, even on its own, is more powerful than the consumers, an emerging nexus between the corporate sector and governance machinery, which is rooted in vested interests of the political elite, has further bolstered its strength. Very often, this results in disregard of consumer interests entirely or selectively in favor of benefiting investors². This situation has made the consumers more vulnerable to exploitation and unfair treatment by the market forces. The consumer continues to remain a weaker actor vis-à-vis the market due to limited political and financial resources for influencing the governance processes, or for engaging the market actors in litigation for fair treatment. As a result, the challenge of protection of consumer rights and public interest has become more complex for the administrative and legal machinery.

2. Administrative and Legal Setting for Consumer Protection: An Overview.

An integrated legal and institutional framework for consumer protection is still in the making in Pakistan. Until now, different arrangements have been in place for dealing with different issues related to consumers and corporate responsibility. Generally these arrangements have been working in isolation from each other. Therefore, it is difficult to identify a coherent pattern of coordination and cross-linkage within the relevant legal and institutional setting, which is broadly categorized into two parts namely administrative and judicial.

1.1 Administrative Justice System

² Some examples of disregarding the consumer interests include increase in price of cars due to high tariff protections provided to local auto industry, broadening the base of indirect sales tax, grant of licenses for setting up factories without Environmental Impact Assessment, exclusive franchise for a bus service company in Rawalpindi/Islamabad etc.

The administrative setting is a union of executive and judicial powers, and comprises magisterial and executive officials with powers vested under different laws for performing executive or administrative functions³. Traditionally, Magistrates had been at the heart of administrative justice for consumers, as they had the responsibility to keep a check on unfair trade practices such as hike in prices, hoarding, and adulteration, etc. Under the Devolution Plan, 2000, these responsibilities have been transferred to the local government system⁴. Now, these powers lie with the Zila Nazim (the elected administrative head of a district) and District Coordination Officer (DCO). Keeping in view the instability in prices of essential consumer goods and service, the government has reverted to the magisterial system, but the powers have been limited only to keeping a check on prices. The government has announced the appointment of a Price Magistrate in all districts who will be vested with complete authority to apprehend and punish profiteers and hoarders⁵.

The local government system provides for a number of other forums, which can be instrumental in disbursing justice at a local level. These forums include establishment of a Complaint Cell in every District Government, Tehsil Municipal Administration Town Municipal Administration and Union Administration for redress of grievances within the ambit of their responsibilities under the Local Government Ordinance, 2001. Moreover it provides for election of an Insaaf (Justice) Committee⁶ which shall be responsible for the selection of the panel of Conciliator of *Musalihat Anjuman* ("conciliation association") for out-of-court amicable settlement of disputes.

The executive officials in the administrative setting include Food Inspectors (power vested under Pure Food Ordinance, 1960), Drug Inspectors (power vested under

³ A number of legal decisions have held that a court, an official, or any other body, which has been put in place to exercise administrative powers, and through it has had to act judicially, should not be construed to be exercising judicial power of the State. Therefore, it does not act as a court and should be considered as part of the Executive and not that of Judiciary. See AG v.BBC (1980) 3 All ER 161, A.G. of Australia v. Reginam and others (1957) 2 All ER 45, Bahadur vs. the state (1985) PLD SC 62 and Fauj Din v. Akhtar Mehmood (1988) PLD. Lah 352.

⁴Section 14(1) of Local Government Ordinance, 2001 read with Part A (XXV) of First Schedule. All subsequent references to local government in this paper are according to the provisions of the Punjab Local Government Ordinance, 2001. Other provinces have similar provisions.

⁵ Federal Budget Speech of Finance Minister, Mr. Omar Ayub Khan, June 5,2006.

⁶ Section 88(n) of Local Government Ordinance, 2001.

Drug Act, 1976) and Quality Inspectors (powers vested under Pakistan Standards and Quality Control Authority Act, 1996), to name a few. These officials might be working at a local, provincial or national level. Generally, their role is limited to surprise checks and collection of samples from the market for ascertainment of quality. In most cases, there are no explicit provisions in the relevant laws, which empower them to entertain consumer complaints.

1.2 Judicial Setting

The judicial setting for consumer protection comprises two layers: quasi-judicial institutions and courts of law. The first layer comprises Federal and Provincial offices of Ombudsman, and regulatory authorities established as independent statutory bodies. The office of Ombudsman was first established at the Federal level in 1983 to diagnose, investigate, redress and rectify any injustice done to a person through maladministration of the government. Later, provincial offices of Ombudsman were created in Azad Jammu and Kashmir, Sindh, Punjab and Balochistan. In recent years, separate Federal Tax Ombudsman and Banking Ombudsman have also been created. These institutions entertain thousands of complaints every year against maladministration. The institution of *Zila Mohtasib* (District Ombudsman), to be established under the Local Government Ordinance, 2001, can be instrumental in providing relief to the people against maladministration of local government departments and civic agencies⁷.

As far as regulators are concerned, their emergence has come along with the process of liberalization of economic sectors and privatization. With this, the role of the government in regulation of the economy has apparently shrunk, as the regulators have been assigned the responsibility to regulate the concerned sector through issuance of licenses, determination of tariff, and formulation and implementation of service standards, etc. Today, regulatory authorities exist in the areas of competition, quality and standards, electricity, oil and gas, telecommunication, and electronic media, etc. These authorities also entertain

⁷ For organization, duties and power of Zila Mohtasib, see Section 134 (6) of Third Schedule, Local Government Ordinance, 2001.

consumer complaints against the respective service providers. The decision of the regulatory authorities can be challenged in the High Court.

The second layer of the judicial setting comprises courts of law including the apex court, the Supreme Court of Pakistan, High Courts at the provincial level, and Subordinate Courts at the district and *tehsil* level. The administration of justice in consumer-related issues has been exercised under different laws such as The Sale of Goods Act, 1930; The Contract Act, 1872; The Specific Relief Act, 1877; Pure Food Ordinance, 1960; Drugs Act, 1976; Pakistan Penal Code, 1860; and Fatal Accidents Act, 1855, etc⁸. The growing realization of the inadequacies and restrictive scope of these laws has compelled the government to come up with comprehensive legislation, which specifically deals with consumer rights. The status of its enforcement and implementation is given in the next section.

3. Comprehensive Consumer Protection Legislation

Recognizing the importance of consumer issues, most countries in the world have enacted comprehensive consumer protection legislation. In Pakistan, the first specific legislation came forth in the form of Islamabad Consumer Protection Act in 1995 followed by the North West Frontier Province Consumer Protection Act in 1997. Since their enactment, these laws continue to remain inactive because the relevant Rules of Procedure and Consumer Protection Councils have yet to be formulated. Although, the scope of these laws is still restrictive and the penalties given are inadequate⁹, their early enforcement could have made a good beginning for putting in place an effective mechanism for providing relief to the consumers.

Realizing the shortcomings in these laws and their dormancy, a number of civil initiatives came into being, which began moving the government to come up with suitable consumer protection legislation in line with the best regional and international practices. Indeed the period from 1998 to 2005 marks the beginning of

⁸ A review of such laws is presented in "Consumer Law in Pakistan", Vols. I & II, Islamabad: Consumer Rights Commission of Pakistan, 1999&2000.

⁹ For a critique on these laws, see A. Salman Humayun Muhammad Sarwar Khan, and Mukhtar Ahmed Ali, Model Consumer Protection Act 2000, Islamabad: Consumer Rights Commission of Pakistan, 2000 p.1

a consumer movement in the country led by some non-governmental organizations, which heavily emphasized that the issue of consumer protection legislation be brought higher on the government's priorities. This period corresponds to the years in which most of the quasi-judicial regulators were established in various sectors such as telecommunication, electronic media, quality standards, oil and gas, and power sector, etc.

Along with the consumer movement of civil society organizations, the Access to Justice Program of the Ministry of Law, Justice and Human Rights has given an impetus to the issue of consumer protection. This program served as a catalyst for the enactment of the Consumer Protection Act in Balochistan and Punjab in 2003 and 2005 respectively. The enactment of these laws is followed by implementation of a nation-wide public campaign on Consumer Protection Laws. The province of Sindh promulgated Sindh Consumer Protection Ordinance, 2004 which lapsed because it could not be enacted into law by the Provincial Assembly. However, the Consumer Rights Council (CRC), which has been set up by Governor Sindh, is working on the Consumer Protection Ordinance, 2006. Effective enforcement of these comprehensive laws could have provided an additional tier in the judicature for specifically entertaining consumer issues.

4. Accessing the Administrative and Judicial System

Although the administrative setting is closer to the people in terms of access as compared to the judicial set up, it has a number of limitations, which have restricted its capacity to provide access to the people. First, there are limited human resources and inadequate infrastructure available at the local level. For example, there is only one Food Inspector for the Islamabad Capital Territory. Similarly, Pakistan Standards and Quality Control Authority has only 11 inspectors to keep a check on the quality of goods and service in the entire country. Secondly, opportunities available to the administrative set up for connivance with manufactures, retailers, and suppliers, etc.

have engendered corruption and kickbacks, thus giving the market a free hand in exploiting the consumers. Thirdly, the powers of the administrative set-up to act as public grievance mechanism are limited in scope and penalties.

Access to the judicial service, especially the courts of law, is difficult due to high costs involved in terms of time and money. Generally, a consumer would avoid approaching them unless the stake involved is very high. The modus operandi for approaching the judicature can be divided into three categories; First, a consumer or his/her representative may approach a legal forum for a personal grievance or the grievance of a family member/s against a manufacturer, retailer, or corporation, etc. However, the decision may affect more than a group, if the competent authority decides to take class action. Secondly, a consumer or his/her representative may approach a legal forum for the larger public interest, which affects the entire nation or a group of citizens. Thirdly, the judiciary has the power to take suo motu action on a problem, which falls within its jurisdiction, which may affect a single citizen or a group of citizens.

In the following paragraphs, representative case studies on each of the three modus operandi are given to present the issues involved and responses received from the relevant legal forums. These case studies would provide the substance for drawing inferences about the challenges before the judicature for balancing the equation of consumers and corporate sector.

4.1 Individual Grievances and Access to Justice

The market scenario in Pakistan is not very promising for the consumers because they are provided with low quality, unsafe, and hazardous goods and services. There are hundred of examples, which show that consumers are exposed to a variety of risks due to unfair market practices. For example, the ratio of adulteration in milk was 59 per cent between August 8, 2001 and December 13, 2004 in Lahore. Out of 31,631 milk samples collected during this period, 8,157 were found contaminated¹⁰. In another case, laboratory tests conducted by the National Institute of Health have

¹⁰ Hamid Ali, 'Adulteration in milk causing health problem on high scale', The News, June 4, 2005

proved that ginger being sold in Islamabad is contaminated with acid. Similarly, in the services sector, there are countless cases of medical negligence in the health sector, and provision of low quality services in utilities¹¹. These problems are a source of grievance to individuals on the one hand, and represent the issue of the larger public interest, on the other hand.

What happens when an individual approaches a legal forum for redress of a grievance which has accrued due to the irresponsible behavior of the formal or informal corporate sector? This is illustrated with a case study of medical negligence, which proved fatal for Ms. Riaz Bibi¹². She was admitted to the gynecology unit of the Cantonment General Hospital, Rawalpindi Cantt, On May 31, 2001 to give birth to a baby. She was discharged from the hospital on June 11. Due to frequent feelings of stomach pain, she underwent an ultrasound, which revealed the presence of a swab in her abdomen. She alleged that Dr. Ghazala who had performed a caesarean section on her, was responsible for this negligence. The report was shown to Dr. Ghazala who allegedly refused to attend the patient. She was finally admitted to Pakistan Institute of Medical Sciences (PIMS) in critical condition. The treatment was provided, but she ultimately died on August 23, 2001 due to the long presence of a surgical sponge in her abdomen.

Following the death of the patient, her husband Mr. Lal Zamir, filed a case against the doctor in the District and Session Court, Rawalpindi on 24 July, 2001 to get justice¹³. The plaintiff claimed compensation of fifty million rupees for the death of his wife due to negligence of the doctor. In order to bear the cost of litigation, Mr. Zamir had to sell his taxi and his home. Having gotten frustrated with the delay in the dispensation of justice, he approached an Islamabad-based non governmental consumer organization for legal support, which was provided. The case took 91 hearings and was decided finally on December 13, 2005 after a lapse of four and a half years. The suit was decreed in favor of Lal Zamir and his children. Revision petitions challenging the orders were filed in Lahore High Court, Rawalpindi Bench, but were dismissed. The Court directed Dr. Ghazala Sadiq and Rawalpindi

¹¹ Cases of such unfair trade practices are frequently reported by print and electronic media. They are also documented in various reports of non-governmental consumer groups.

¹² For details of this case study, see Medical Negligence: Tragedy under Wraps, Islamabad: The Network for consumer Protection, 2006

¹³ Lal Zamir vs. Dr. Ghazala, etc. Case No.347/2002

Cantonment Board to pay Rs. 1.19 million as damages and compensation to the plaintiff severally and jointly.

There are very few examples of this kind of suits in Pakistan because the perception of delayed justice makes people avoid, to every possible extent, litigation in a court of law.

4.2 Public Interest Litigation

Public interest litigation is a popular modus operandi for advocating the cause of consumer protection on issues, which affect a large number of people. There are many examples, which show that consumer groups and concerned citizens were able to move the courts in the interest of public. This is illustrated through a case study, which represents typical public interest litigation involving consumers, the corporate sector, a regulatory authority, and the higher judiciary.

Pakistan Telecommunication Authority (PTA) was established under the Pakistan Telecommunication (Re-Organization) Act, 1996 as a quasi-judicial statutory body with the aim to safeguard the interests of users of the telecommunication service in Pakistan¹⁴. Under the law, the Authority is vested with the power to provide licenses, maintain standards of services, and regulate tariffs of telecommunication services in the country.

Pakistan Telecommunication Company Limited (PTCL), the largest telecom sector organization of the country, submitted a Tariff Rationalization Proposal to the PTA for the year 2000-01 on 26th June, 2000. The Proposal sought rationalization of cross subsidies accompanied by an increase in telephone line rent by 19 percent and local call charges by 57 percent with a slight reduction in Nation-wide Dialing (NWD) call charges. As provided in the law, the PTA invited public comments on the Proposal followed by a public hearing on 15th July, 2000. In the public hearing, PTCL gave a presentation on the Proposal, which indicated that the demand for increase in tariff

¹⁴ Pakistan Telecommunication (Re-Organization) Act, 1996, Section 6(f)

was based on arbitrary speculation depicting the increase in cost of telecommunication services. The company quoted a number of studies to support its position. However, the copies of these studies were not made available to the participants of the public hearing. The Consumer Rights Commission of Pakistan (CRCP)¹⁵ intervened on behalf of consumers and opposed the proposal on the ground that it was based on a number of unexamined assumptions, which were not supported by adequate analysis of data. The Proposal did not explain the factors, which were contributing towards increase in the cost of services. Moreover, the Proposal sought to charge the cost of network expansion from consumers. CRCP argued that network expansion was a question of further investment and therefore, its cost should be met from the profit of the company or through other arrangements.

After the public hearing, CRCP requested the PTA to provide a copy of the presentation made by the petitioner and the reports it had referred to during the presentation and other related documents in support of the Proposal¹⁶. In response, the PTA provided a copy of the presentation whereas other studies and documents, which were used by the PTCL as evidence to support the proposal, were not provided. CRCP again requested the Authority to provide copies of these documents as well¹⁷. The Authority, however, was pleased to explain to the CRCP: "We have already provided the available information and we feel the input provided by CRCP was enough. Rest of the analysis is carried out by PTA itself"¹⁸. It led the CRCP to conclude that, probably, no such studies were conducted by the petitioner because the Authority had also asked the PTCL to provide information¹⁹ which was never provided. This failure attracted no legal action from the Authority despite the fact that PTCL was bound to give the same information under section 21(4) C of the Pakistan Telecommunication (Re-Organization) Act, 1996, which requires the licensee "to furnish to the Authority such information as may be required by the Authority". The failure of PTCL to provide information for analysis should have been sufficient reason to turn down the Proposal.

¹⁵ CRCP is a national non-governmental organization, which has been working on consumer rights since 1998 with a focus on governance and market practices.

¹⁶ CRCP's letter to PTA, dated July 17,2000

¹⁷ CRCP's letter to PTA, dated July 19,2000

¹⁸ PTA's letter to CRCP, dated July, 24,2000

¹⁹ PTA,s letter to PTCL, No.25-18/99 (Tariff)/PTA, dated July 12,2000.

The PTA gave its decision on 17th August, 2000 and accepted the Proposal with certain modifications. The denial of the right to information and failure of the Authority to give due consideration to the observation of CRCP defeated the whole purpose of the public hearing. CRCP requested the PTA to provide a copy of the decision, which also was not provided. Ten days after dispatching the first letter, CRCP sent a reminder for a copy of the decision. In response to the reminder, PTA informed the CRCP that the decision would be posted on the website from where CRCP could access it.

Disappointed with the poor response of the Authority, CRCP filed an appeal before the Lahore High Court, Rawalpindi Bench, against the PTA decision under Section 7(1) of the Pakistan Telecommunication (Re-organization) Act, 1996 read with Order 41 of the Code of Civil Procedure²⁰. After giving the details of the case, the Appeal maintained that the conduct of the regulatory authority amounted to a flagrant violation of the principle of natural justice as expressly provided in the Act. It had not only failed to comply with its statutory obligation of affording an adequate opportunity of being heard to persons likely to be affected by its impugned decision, but had also contravened other mandatory provisions of the Act such as publicizing the criteria for determination of tariffs three months before the application thereof to the Tariff Proposal, and the tariffs to be cost-based with a reasonable rate of return on investment, etc. Moreover, failure of the PTA and PTCL to provide the required data made it almost impossible for the Appellant to present a counter-case to the Tariff Proposal.

The appeal came up for hearing on 13th September, 2000, when the High Court passed the order that a certified copy of the decision should be provided within seven days. The process lingered on mainly due to failure of the respondents to provide sufficient information for analysis. Meanwhile, the tariff was twice revised by PTA during the pendency of the appeal thus making the proceedings irrelevant. Therefore, the case was not further pursued.

²⁰ Appeal No.FAO 97/2000

This study shows how a quasi-judicial statutory body tended to justify increase in tariff of telecommunication services by taking into account the privatization agenda of the government, policy directives issued by the Federal Government, and revenue interests of the Government in total disregard of its legal mandate and consumer interests. The proposal was accepted with certain modifications despite the fact that the licensee failed to provide sufficient information for analysis of its proposal. In this case, timely disposal of the appeal against the order could have provided substantial relief to the consumer.

4.2 Suo Motu Actions

The judicature can take notice on its own of a consumer problem for the welfare of society. It is important to note that the judiciary makes pragmatic choices in selecting a problem for suo motu action. Some issues easily capture the attention of judiciary while others do not. This is explained in the two case studies presented below. The first case study is based on an issue, which affected a large number of consumers, but did not come up as an issue in the media. It was taken up by the Supreme Court of Pakistan. The second case is an example of a problem, which affected almost every consumer and was canvassed as a major issue in the media and public debate, but it could not capture the attention of the judiciary.

The first case study is about the difficulties being faced by consumers in depositing utility bills in banks. Over 7,200 bank branches accept utility bills of electricity, natural gas, and telephone, and water, etc. Generally, the arrangements for collecting bills are not appropriate forcing consumers to stand in a queue outside the banks under open sky, which exposes them to severe weather conditions and dust. The facilities of air conditioning system, drinking water and toilet for depositors of utility bills are also missing in most bank branches. The State Bank of Pakistan (SBP) has the powers to regulate the affairs of banks under the Banking Companies Ordinance, 1962. Realizing consumer concerns, the SBP had issued a circular on 10th November, 1997 for simplifying and streamlining the procedure for collection of utility bills through strict compliance with prescribed timing, availability of adequate counters,

and ensuring multiple methods of depositing bills, etc²¹. The circular, however, was not fully implemented by the concerned banks.

On 28th March, 2006, the Supreme Court of Pakistan took suo motu action on seating and other arrangements in commercial banks for depositing utility bills²². The apex court was of the view that the inadequate arrangements amounted to “clear violation of the basic human rights requiring urgent attention of the State Bank of Pakistan to take immediate short term and plan long term remedial measures.”²³ A hearing was held by a Supreme Court Bench comprising, Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan, Mr. Justice Mian Shakerullah Khan and Mr. Justice Syed Jamshed Ali on 5th April, 2006 in which the representative of State Bank of Pakistan requested some time for convening a meeting of all stakeholders to collect suggestions. The Court allowed the request. In the next hearing on 8th May, 2006, the Deputy Attorney General informed the Court that in addition to the facilities already being provided, the State Bank of Pakistan has notified further steps for implementation by the banks.

In compliance with the order of the Supreme Court, the State Bank of Pakistan convened a meeting of all the heads of Utility Companies, Presidents/Chief Executive Officer of the banks, Director General Pakistan Post Office, Chairmen of National Electric Power Regulatory Authority, Oil and Gas Regulatory Authority and PTA, and Chairman/Secretary of Pakistan Bank Association on 23rd May, 2006 at SBP Building Karachi. Notably, not a single representative of the consumers was invited to the meeting, which was convened to discuss a procedure affecting the consumers. This indicates a general problem with utilities, which serve the consumer, but do not consider them a legitimate stakeholder in decisions affecting them. Notwithstanding this shortcoming, the point worth appreciation is that the State Bank of Pakistan has promptly taken concrete steps in this regard pursuant to the order of Supreme Court of Pakistan.

As opposed to the above case study, there are a number of examples, which show that many consumer issues fail to attract suo motu action. This is illustrated through

²¹ BPRD Circular No.38 , November 10,1997

²² Suo Motu Case No. 4 of 2006

²³ Order of HJ(16) a/w order of HCJ, March 28,2006

a case study about the sugar crisis, which marked the beginning of 2006. A sharp increase in price of sugar fell heavily on the consumers, especially the poor and marginalized, severely affecting their access to this basic commodity. This situation invited criticism from a cross section of society on the economic policies of the government. The opposition began to highlight this issue as an opportunity to criticise the liberal economic policies of the government. The opposition demanded an independent inquiry of the crisis by the National Accountability Bureau (NAB). The government and upfront organization of sugar mills, Pakistan Sugar Mills Association (PSMA), on the other hand, kept emphasizing that the crisis was due to increase in sugar prices in the international market.

The actual responsibility of dealing with this kind of situation lies with Monopoly Control Authority (MCA), which is a quasi-judicial statutory body established under the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970. The MCA initiated an inquiry into the crisis and found that 42 sugar mills had released fewer quantities of stock thus limiting sale with reference to requirement. This created scarcity of the commodity in the market²⁴. While the Authority continued its investigation, NAB announced on 9th March, 2006 that it would register cases against sitting parliamentarians, Government officials and sugar mill owners involved in the sugar crisis after a probe, to be completed within one month. After that, action would be taken against those found guilty. Media reports showed that this decision was welcomed by the people. However, four days after this announcement, NAB withdrew from its decision to conduct an inquiry following the threats of a price hike from the sugar mills. Press reported that influential sugar mill owners had succeeded in compelling NAB to stop further probing the crisis²⁵.

Press reports were repeatedly highlighting that most of the mill owners were sitting public representatives and political elite. Instead of relying on the MCA's investigation, the government adopted the policy of importing raw sugar and directed the banks to withdraw working capital loan from the sugar industry up to 31st July, 2006. It has been witnessed a number of times that when domestic market forms cartels, government reverts to a liberal import policy by reducing import duty on the

²⁴ Monopoly Control Authority, Order served on M/s Adam Sugar Mills Ltd. File No. 1(7)/MISC/(DCR&I)/MCA/06)

²⁵ Dawn, March 14,2006

commodity in question, instead of prosecuting the elements responsible for the problem. This is an example of a case in which public expected a judicial intervention, but somehow it could not attract the attention of the judiciary.

5. Conclusion: Challenges and Options

On the basis of the case studies and analysis presented above, we can draw some inferences regarding the challenges and options before the judicature.

5.1 The consumers and the market form an unbalanced equation. This imbalance has put the consumers in a disadvantaged position vis-à-vis the market, which is more powerful in terms of resources, knowledge and capacity of exerting pressure on the governance processes. As a result, articulation and protection of consumer rights and the larger public interest has become a complex challenge for the legal and institutional setting. To meet this challenge, the judiciary should adhere to the notion of equity and fairness and the rule of purposive construction²⁶ for providing justice to the consumers and in the larger interest of the society. There are dozens of examples around the world, which indicate that the judiciary treated the consumer equitably vis-à-vis the market by shifting the burden of proof on market when it acted as respondent, or by award of 'exemplary compensation', etc.²⁷

5.2 In case of a dispute with the market, consumers are concerned with justice regardless of the tier of legal setting, as long as it serves their purpose in a cost-effective and expeditious way. However, from the viewpoint of accessibility and efficiency, the recourse to legal redress should start from the administrative justice system. Given the conflict of interest of the Executive and Legislative organs in consumer protection, there were serious limitations on the role of administrative setting as arbitrator between the consumers and the market, which has compelled the consumers to look towards the judicature for justice, which has its own limitation. As explained in the first two case studies, it takes years for the judiciary to decide a

²⁶ For meaning and rationale of purposive construction, see Justice (R) Fazal Karim, Access to Justice in Pakistan, Islamabad: Pakistan Law House, 2003, pp.79-80

²⁷ Such examples are abundant in historical case law in India. For example, see Ram Parkash Pahwa vs. Life Insurance Corporation of India, etc., 2006 Indlaw NCDRC 8, and Smt. Ranjana Singh vs. Bihar State Electricity Board, Case No. 2010/4/98-99.

case, in addition to the huge financial costs involved. As a result, even voluntary organizations and non-governmental organizations lose the capacity to pursue the case, let alone the individual consumers.

5.3 The response of the lower tiers of the judiciary and quasi-judicial institutions needs to be improved in terms of their orientation on consumer issues, responsiveness, transparency and efficiency. Most of the consumer problems have to be solved at the administrative and quasi-judicial tiers in order to avert the stress, which is likely to fall heavily on higher judiciary, if response of the lower tiers of legal system continues to remain inadequate.

5.4 The apex court appears to have realized that lower tiers of the judicial framework including executive officials with quasi-judicial powers, regulatory authorities, and political branches of the government are failing to address the vital needs of the society and administer justice for the consumers. Probably, this understanding is the driving force behind the active role of the apex court, but if the Supreme Court has to do every thing, then Pakistan needs a thousand Supreme Courts spread across the country and a thousand upright Chief Justices. The point is that if consumer issues are taken up directly by the apex court, it would further stress the dispensation of justice in higher judiciary. There is a need to improve the response of the regulatory regime and subordinate courts to consumer issues.

5.5 There are several limitations of the suo motu approach of the judiciary. Some issues attract the attention of judiciary while other do not. The selection of an issue for suo motu action depends on a host of factors such as personal orientation of judicial officials, and the magnitude of legal and political challenges involved, etc. Therefore, this modus operandi cannot alone solve all problems of consumers all the time. In addition to suo motu action, orientation of alternative dispute resolution mechanisms on consumer issues can be one of the feasible options. There is a need to build the capacity of these mechanisms to address consumer concerns at the local level on one hand, and sensitize the citizens to engage them for redress against the grievances, which they have as consumers of good and services, on the other hand.

5.6 There is a need to render operative the consumer protection framework envisaged under the Federal and Provincial Consumer Protection Acts on the one hand, and to ensure that sectoral regulators are able to perform their functions independently according to the due process of law without any political interference and policy directives from the Federal Government, on the other hand.

5.7 There is a need to keep the concerned administrative and judicial officials, especially judges, abreast with emerging trends and legal issues taking place in the field of consumer protection. In this regard, specialized training courses should be designed and implemented by concerned organizations such as the Ministry of Law Justice and Human Rights, and Federal Judicial Academy, etc. The government may collaborate with consumer groups, bar associations, and other civil society organization in designing tailored training programs.